

EXHIBIT A

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Terms: kitchen v. peoples gas (Edit Search)

1993 Ill. PUC LEXIS 485, *

Noel Kitchen: v. The Peoples Gas Light and Coke Company: Complaint as to billing in Chicago, Illinois

92-0368

ILLINOIS COMMERCE COMMISSION

1993 Ill. PUC LEXIS 485

December 15, 1993

CORE TERMS: residential, unpaid balance, commercial property, unpaid, owing, Public Utilities Act, documentary evidence, conclusions of law, amount owed, delinquent, pertaining, formerly, overdue, owed

OPINION: [*1]

ORDER

By the Commission:

On September 30, 1992, Noel Kitchen ("Complainant") filed with the Illinois Commerce Commission ("Commission") his verified complaint against The Peoples Gas Light and Coke Company ("Respondent"). The complaint pertained to denial of service for Complainant's residence in Chicago, Illinois.

Pursuant to notice duly given as provided by law and the rules and regulations of the Commission, this matter was set for hearing before a duly authorized Hearing Examiner on December 2, 1992. Complainant appeared by his counsel and offered testimony and documentary evidence to support his complaint. Respondent appeared by counsel and also presented both testimony and documentary evidence. At the close of the hearing the record was marked "Heard and Taken."

A copy of the Hearing Examiner's Proposed Order was served on the parties and no exceptions were filed thereto.

Complainant testified that when he applied for gas service at his current residence, 2424 West Warner, Chicago, Illinois, he was informed that he owed Respondent for gas service at two properties: a multi-unit apartment building at 1901 West Foster in Chicago ("Foster property"), and his former [*2] residence at 4506 North Francisco in Chicago ("Francisco property"). He stated that Respondent refused to serve him at his current residence until the delinquent bills were paid.

Complainant testified that with respect to the Foster property, he was only a contract purchaser of the property and, thus, never had service in his name. He further stated that the tenants at the Foster property had individual heating units and the landlord would not have to pay for gas service anyway. With respect to the Francisco property, Complainant stated that the service was taken out of his name in 1986. He stated that, to the best of his knowledge, he was not contacted by Respondent regarding a delinquent account for this address.

On cross examination, Complainant admitted that he owned the Foster property. He also stated that the Francisco property was his personal residence beginning in 1984.

Ms. Mary Grath testified on behalf of Respondent as a keeper of records for Respondent. She testified that the gas service account for the Foster property was a hot water account only. She stated that on July 24, 1986, the service was locked off for nonpayment of bills. The amount owed was \$ 1,145.29. [*3] Ms. Grath further stated that Respondent's records show that Complainant called Respondent to set up service for the Foster property on January 6, 1986. She also stated that the social security number on this account was the same number that Complainant testified to as being his.

Ms. Grath testified that with respect to the residence on Francisco avenue, the balance was \$ 604.44 when a request to terminate service was received. At that point Complainant's account went into collection status.

Complainant argues that Respondent's claims are barred by the Illinois Statute of Limitations. He contends that if had owed Respondent money, Respondent should have sought legal recourse.

Respondent asserts that the Statute of Limitations in the Illinois Code of Civil Procedure is not relevant to this case. Respondent further argues that there is no time limitation with respect to denying service.

COMMISSION ANALYSIS AND CONCLUSIONS

It is the Complainant's burden to prove the allegations contained in his complaint and he has not met this burden. The record overwhelmingly demonstrates that Complainant owes Respondent for past service at the Foster and Francisco properties. Complainant [*4] has not offered any evidence indicating otherwise.

Complainant's argument that the Statute of Limitations has run is without merit. Respondent is within its right to deny Complainant service. The Statute of Limitations contained in Paragraph 13-205 of the Illinois Code of Civil Procedure, 735 ILCS 5/13-205 (1992) does not apply to this case. The rule establishes a time limit by which a party may go to court to enforce his/her rights under the contract. This rule does not a party of the substantive rights he/she enjoys under a contract. Respondent is entitled to the amount owed to it by Complainant. Respondent is within its rights to collect its debt by means other than a lawsuit, e.g. deny service to Complainant until the debt is paid.

The Commission, however, will not allow Respondent to deny residential service to Complainant based upon an unpaid commercial account. 83 Ill.Adm.Code Section 280.50(c) provides as follows:

A bill for non-residential service shall not be transferred to a bill for residential service, and vice versa . . .

Thus, Respondent can continue to deny Complainant service at his residence until he pays the overdue balance from the Francisco [*5] property, which once served as Complainant's residence. Respondent, however, cannot deny service to Complainant based upon his overdue commercial account for the Foster property. Once, the balance of \$ 604.44 on the Francisco property is paid, Respondent can no longer deny residential service to Complainant. In addition, if, in the future Complainant wishes to have service established in his name on a commercial account, Respondent has the right to deny him such service until his outstanding balance on the Foster property is paid.

The Commission, giving due consideration to the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) Respondent, The Peoples Gas Light and Coke Company, is a corporation to the public in Illinois, and, as such, is a public utility within the meaning of The Public Utilities Act;
- (2) the Commission has jurisdiction over Respondent and of the subject matter of this proceeding;
- (3) the statements of fact and conclusions of law set forth in the prefatory portion of this Order are supported by the evidence in the record and are hereby adopted as findings of fact and conclusions of law;
- (4) The amount of \$ 604.44 [*6] is properly due and owing from Complainant to Respondent for an unpaid account for Complainant's former residence at 4506 North Francisco, Chicago, Illinois;
- (5) The amount of \$ 1,145.29 is properly due and owing from Complainant to Respondent for an unpaid account for a commercial property previously owned by Complainant located at 1901 West Foster, Chicago, Illinois;
- (6) Respondent properly denied establishing residential service at 2424 West Warner, Chicago, Illinois in Complainant's name because of an unpaid balance in his name from his former residence;
- (7) Respondent may not deny establishing residential service in Complainant's name because of an unpaid balance in his name on a commercial property at 4506 North Francisco, Chicago, Illinois, formerly owned by

Complainant;

(8) the amounts in dispute are properly due and owing to Respondent from Complainant;

(9) this complaint may properly be denied.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Complaint of Noel Kitchen against The Peoples Gas Light and Coke Company filed September 30, 1993 be and the same is hereby denied.

IT IS FURTHER ORDERED by the Illinois Commerce Commission that The Peoples [*7] Gas Light and Coke Company may deny the application for residential service of Noel Kitchen until he pays his unpaid balance of \$ 604.44 pertaining to his former residence located at 4506 N. Francisco Ave. in Chicago.

IT IS FURTHER ORDERED by the Illinois Commerce Commission that The Peoples Gas Light and Coke Company may not deny the application for residential service of Noel Kitchen based upon his property due and unpaid balance of \$ 1,145.29 pertaining to a commercial property formerly owned by him located at 4506 North Francisco, Chicago, Illinois.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Tire. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

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